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United States Senate

COMMITTEE ON APPROPRIATIONS
WASHINGTON, DC 20510-6025
<http://appropriations.senate.gov>

CHARLES J. HOUY, STAFF DIRECTOR
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January 20, 2010

Mr. Christopher Bliley
Associate Administrator for Congressional
and Intergovernmental Relations
Environmental Protection Agency
1200 Pennsylvania Ave, NW, Room 3426 ARN
Washington DC, 20460

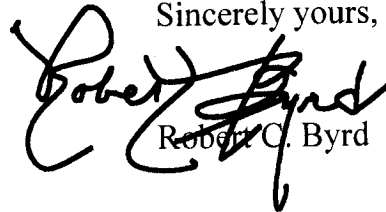
Dear Mr. Bliley:

Please see the enclosed correspondence from Mr. Herbert R. Thompson.

I would appreciate your looking into this matter, and providing me with comments that may serve as the basis for my reply to Mr. Thompson.

With kind regards, I am

Sincerely yours,



Robert C. Byrd

RCB:rd
Enclosure



American Bituminous Power Partners, L.P.

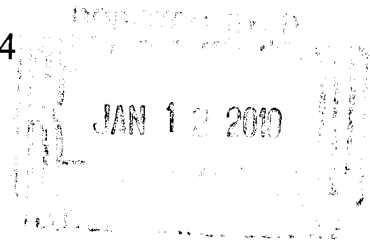
Grant Town Power Plant

P.O. Box 159, Highway 17

Grant Town, West Virginia 26574

Telephone: (304) 278-7449

Fax: (304) 278-7437



The Honorable Robert C. Byrd
311 Hart Senate Office Building
Washington, DC 20510

RE: Coal Ash Should Not Be Regulated As A Hazardous Waste

Dear Senator Byrd:

I write to ask for your assistance in preventing the U.S. Environmental Protection Agency (EPA) from wreaking further havoc and job losses on the economy by regulating coal ash, the largest waste stream in the nation, as a hazardous waste under the Resource Conservation and Recovery Act ("RCRA"). Despite opposition from nearly every state in the nation, EPA has sent a proposal to the Office of Management and Budget that would adopt the most extreme regulatory option available – regulation as a hazardous waste – for coal ash, despite EPA's acknowledgement that equally protective and far less costly options exist for regulating coal ash as a *non-hazardous* waste. This ill-advised proposal makes no sense and should not be allowed to proceed.

American Bituminous Power Partners, L.P. (AmBit) is not alone in our opposition to EPA's proposal. In an unprecedented show of opposition, the National Governors Association, the National Conference of State Legislatures, the U.S. Conference of Mayors, Unions for Jobs and the Environment, the Environmental Counsel of States, the Association of State and Territorial Solid Waste Management Officials, Tribal Governments, twenty-seven state environmental protection agencies, state DOTs, state Public Utility Commissions, technical and educational organizations, scores of companies that beneficially use coal ash, and multiple regional, state and federal chambers of commerce have weighed in *unanimously* opposing the regulation of coal ash as a hazardous waste as regulatory overkill. These entities argue convincingly that such regulation would actually have adverse environmental impacts by effectively eliminating the beneficial use of coal ash and the corresponding greenhouse gas reductions achieved through those uses. These letters and more are available at <http://www.uswag.org/ccbletters.htm>.

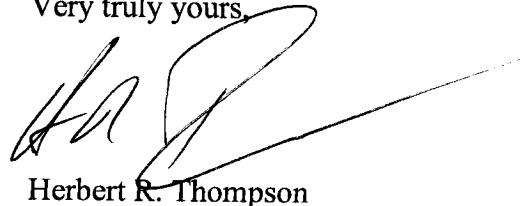
EPA has already determined on two prior occasions, including during the Clinton Administration, that hazardous waste regulation is *not* warranted for coal ash and that the Agency should instead develop non-hazardous waste rules for coal ash. There is no basis in science, the law, or policy for reversing these prior decisions. While we understand

EPA's focus on establishing federal regulations for coal ash in the wake of last December's ash release at TVA's Kingston facility, EPA has candidly acknowledged that regulations under RCRA's non-hazardous waste program would be fully protective and much less costly. Even EPA is currently sending the coal ash from the Kingston spill to a *non-hazardous* waste facility. EPA chose this course of action after making the determination that such disposal is fully protective of human health and the environment; it defies logic for EPA to propose that the rest of the nation spend billions of dollars in compliance costs to manage coal ash as a hazardous waste when EPA has determined that it can be safely managed as a non-hazardous waste.

From AmBit's perspective, EPA's proposal would impose crippling economic burdens on our operations at time when we can least afford it. Studies provided to OMB demonstrate that not only would the regulation of coal ash as a hazardous waste cost the power industry approximately \$20 billion annually or more, such regulation would result in the closure of power plants, create power reliability concerns, and raise electricity rates for our customers. The States also have warned that regulating coal ash as a hazardous waste would in one fell swoop add an additional 130 million tons of hazardous waste annually to the nation's hazardous waste system; currently, 2 million tons of hazardous waste are disposed of annually. The nation's disposal infrastructure cannot accommodate this, the States cannot afford it, and it is not necessary to protect human health and the environment.

Given all of the above, we ask that you write EPA Administrator Lisa Jackson urging EPA to take a rational and reasoned approach to this issue by developing federal *non-hazardous* waste rules for coal ash.

Very truly yours,

A handwritten signature in black ink, appearing to read 'H. R. Thompson', with a long horizontal flourish extending to the right.

Herbert R. Thompson
Executive Director